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All Parties in the Dockets

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In Re: Docket Nos. E-00000-02-0051, E-01345-01-0822, E-00000A-06-0630, E-01933A-02-0069 and E-01933A-98-0471 (Electric Restructuring Dockets) 01

My Fellow Commissioners and Parties:

I applaud the efforts of the parties to electric restructuring, efforts both serving Arizona consumers and presenting their case before this Commission. As we approach the one-year mark in this docket, I hope to assist the process by identifying issues I believe are now ripe for resolution which, taken together, will protect ratepayers and continue Arizona's transition to a competitive electric market.

Independent Power Producers ("IPPs") have invested hundreds of millions of dollars in Arizona, Arizona Public Service ("APS") and Tucson Electric Power ("TEP") have written off hundreds of millions of dollars worth of assets and the Commission and all parties have expended countless hours in furtherance of sound public policy. Now it is time to reach resolution and consensus, both for Arizona ratepayers and for the market participants.

Arizona's transition to a restructured electricity market has already achieved notable success – tremendous investment in new generating capacity resulting in an excess of generating supply over demand, which will become even more substantial and accessible with the transmission enhancements planned over the next five years, viable and vibrant local utilities and, most importantly, Arizona consumers continue to enjoy reliable and affordable electricity. However, we must acknowledge our shortcomings – the failure of retail electric competition, the failure of IPPs to invest in solutions to Arizona's transmission constrained areas (the same areas in which they proclaim a desire to serve) and the failure of the parties to reach agreement on competitive solicitation in Arizona's wholesale electricity market during a period of historically low wholesale prices.

Below are my views on certain pressing issues, presented in the hope a consensus may be achieved that protects ratepayers: divestiture, protecting residential ratepayers and competitive solicitation in Arizona's wholesale electric market.

Divestiture

I have been persuaded by Staff's arguments on divestiture. In April, Staff wrote that "[a]n orderly transition to competition necessitates that a competitive market be enabled, yet demands

protection for customers who continue to be captive.”¹ Given that there are zero residential customers taking competitive service in Arizona, the ‘captive customer’ argument for a delay in implementing the transfer and separation of assets is particularly compelling.

My reading of the Pinnacle West Capital Corporation letter of July 11, 2002 is that APS has proposed a means by which this Commission can resolve the transfer and separation of assets issue. I encourage the parties to work with Staff and APS to achieve this goal in order to protect ratepayers.

Residential Ratepayers

I have considered the question of residential electric competition. Statistics from Pennsylvania and Texas are interesting, yet those arguing for retail competition in Arizona have made no serious attempt to offer residential service in Arizona, *even though Arizona’s residential markets have been open for over 18 months and one of our Utility Distribution Companies has been available for purchase for years*. Arizona residential ratepayers are not participating in this market and the volatility of California has discouraged competitive Electric Service Providers (“ESPs”) from entering the residential electric service market. Neither ratepayers nor ESPs seem interested in this market for now.

There are three distinct classes of electric consumers: industrial, commercial and residential. I urge the parties in the docket to reach agreement on a means by which Arizona can protect residential consumers from today’s market volatility while allowing industrial and large commercial users the ability to enter into contracts for competitive electric service. For those who argue that this would deny residential consumers the savings of competitive service, I point out that to date the primary method of achieving such ‘savings’ has been agreements to interrupt service. On a 110-degree Arizona day, no residential customer should suffer interruption of electric service. Until the wholesale market stabilizes, this Commission should phase in electric competition with the residential consumer market being the last segment opened, but opened nonetheless.

Competitive Solicitation

There should be no mistaking my deep commitment to wholesale electric competition, it yields environmental benefits, economic savings and greater efficiency than government-mandated rate of return regulation. I have pored over the briefs filed in the Track B proceeding. The question of which solicitation process to use and its timing is one that this Commission can rightly demand that parties solve together. One major question is the percentage of load subject to solicitation.

It is not my role to dictate the litigation position of any party. However, one IPP in particular persists in maintaining an intractable position vis-à-vis the amount and timing of competitive solicitation. While I recognize that IPPs are not “public service corporations”, I believe this

¹ See “Staff’s Response to Arizona Public Service Company’s Motion for Determination of Threshold Issue”, April 23, 2002

Commission should always place the interests of public health and welfare over those of corporate shareholders.² I, for one, am prepared to defend this belief in any court in the land. Therefore, I urge all parties to consider the Commission's responsibility to the broad public interest, to consider the amount of generating capacity actually available and deliverable and to reject manifestly self-interested positions that preclude a negotiated settlement.

I suggest that the parties to these dockets jointly cooperate to protect residential ratepayers, to resolve the transfer and separation of assets issue and to provide this Commission with a negotiated competitive solicitation process to commence implementation no later than January 1, 2003. As a believer in the free market solution, I am proposing herein a path by which Arizona can continue its transition to competitive electric markets while recognizing today's market volatility and uncertainty.

Make no mistake, the end state of this proposal is a future in which the wholesale electric market is competitive fair, and in which modern, efficient and clean generation replaces aged and highly polluting plants; a future in which every Arizonan is free to choose among several providers of electricity to select the provider which best meets his or her needs. It is not an abandonment of the free market to recognize that in today's electric industry the market is not now sufficiently stable to abandon the traditional protections afforded to ratepayers.

Very Truly Yours,



Marc Spitzer
Commissioner

² See, e.g., Arizona State Constitution, Article 15, § 3 ("The Corporation Commission shall have full power to...make and enforce reasonable rules, regulations, and orders for the convenience, comfort and safety..."); Arizona Community Action Ass'n v. Arizona Corporation Commission, 123 Ariz. 228, 231, 599 P.2d 184 (1979) ("The jurisprudence of our State made it plain long ago that the interests of public-service corporation stockholders must not be permitted to overshadow those of the public served.")